THE HON'BLE SRI JUSTICE C.V. RAMULU

Wednesday, 5th day of December,2007

W.P.No.4675 of 1999

Between:-

Vasanthrao Kulkarni … Petitioner

and

The Cement Corporation of India
Ltd., rep. by its Chairman and
Managing Director, 45 Scope Complex,
7,Lodhi Road, New Delhi
and another … Respondents

THE HON'BLE SRI JUSTICE C.V. RAMULU

WRIT PETITION No.4675 of 1999

ORAL ORDER:

This Writ Petition is filed seeking a Mandamus declaring the action of the 2nd respondent in calling upon the petitioner to work under a contractor as a labourer having been appointed to the permanent post of Tester-cum-Guager in the Production Department of the 2nd respondent-organization as arbitrary and illegal.

According to the petitioner, the respondent-Cement Corporation of India Limited had acquired Ac.40.00 of land belonging to the petitioner and others. At the time of acquisition of land, petitioner and others, who became land oustees, were promised to provide with employment in the organization. In pursuance of the said promise, petitioner was engaged in the month of March,1994 for a period of six months, which was being extended from time to time upto August,1996. Thereafter, according to the petitioner, after serving for more than 2 years, he was asked to work under a contractor engaged by the organization for the same work, which was attended to by him earlier and it was his legitimate expectation for absorption of his services in the Corporation. This is nothing but betrayal of the promise made by the respondents at the time of acquisition of land of the petitioner and others.

The respondent-management filed a detailed counter denying the allegations made by the petitioner. However, it is admitted that during the month of March,1994, the petitioner was engaged on contract basis by the Corporation itself independently and the contract

was extended from time to time. However, after August,1996, the contract of the petitioner was not extended and the petitioner on his own joined with a contractor, who was engaged by the respondent-company for supply of labour. Therefore, it cannot be said that the respondents asked the petitioner to work under a contractor engaged by them instead of absorbing his services on regular basis in the Corporation. In the month of August,1996, the management took a policy decision to get the work of Vertical Roller Mill and Coal Mills in Central Control Room and Testing Jobs in Laboratory done through contract labour. The same was approved by the General Manager vide his Orders dated 1-9-1996. Pursuant to the said approval, the management awarded the work to M/s S.Selva Rajan. The said Selvarajan appears to have engaged the petitioner with effect from 1-9-1996 under him and he was working continuously with the said contractor. Even with Selvarajan the petitioner worked only for a period of 3 months and thereafter, he did not work with him. After a lapse of 2 years 4 months, petitioner approached this Court and filed the present Writ Petition. There was no agreement, oral or written, promising the petitioner to be appointed as a land oustee in view of acquisition of land of the petitioner for the purpose of establishment of the company. There was no agreement and there was no binding promise made by the respondents at any time. Petitioner, in fact, joined with Selvarajan in the month of September,1996 and worked for 3 months and left thereafter.

There is no necessity of going into all the details. While admitting the Writ Petition on 9-3-1999, by way of an interim order in W.P.M.P.No.5858 of 1999, this Court directed the 2nd respondent to continue the petitioner in service. Thereafter, respondents filed a petition in W.V.M.P.No.1380 of 1999 seeking to vacate the said interim order. Both the petitions were disposed of on 20-7-2007 vacating the interim order, by taking note of the fact that the petitioner had earlier

filed W.P.No.4218 of 1998 seeking a Mandamus directing the Cement Corporation of India, New Delhi to continue him in the Production Department on a consolidated pay and consequently to direct the respondents to regularize his services as Testor-cum-Gauger or in any suitable post for which he is eligible, which was dismissed by an Order dated 22-4-1998 holding that the petitioner is claiming the same relief based on the alleged oral agreement and in the Writ Petition, it is not possible to consider such plea, which requires factual investigation and no right of the petitioner has been infringed and he is claiming enforcement of alleged oral promise; therefore, the remedy of the petitioner was somewhere else, but cannot be decided under Article 226 of the Constitution of India. In view of the said order, the interim order passed on 9-3-1999 was vacated.

This Writ Petition is also liable to be dismissed for the very same reasons and for the reason that the petitioner has not made out any case to hold that the respondents have forced him to work under a private contractor. However, this will not preclude the petitioner from working out the remedies as available under the law. The Writ Petition is devoid of any merit and is liable to be dismissed.

Accordingly, the Writ Petition is dismissed. No order as to costs.

05-12-2007

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